ATTACHMENT 2 TO

@ COMMUNICATIONS' REPLY COMMENTS

JUL 20 2001

STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH

DOCKET NO. P-7, SUB 969
DOCKET NO. P-10, SUB 611

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Petition of @ Communications, Inc. for Enforcement of Interconnection Agreement Terms, Complainant, v. Carolina Telephone and Telegraph Company and Central Telephone Company, Respondents	)	**ORDER HOLDING DOCKETS IN ABEYANCE**

BY THE CHAIR: On July 16, 2001, @ Communications, Inc. (@) filed a Reply to the Answer of Carolina Telephone and Telegraph Company and Central Telephone Company (Carolina) of July 9, 2001. The central issue concerned cost responsibility for trunks on Carolina's side of the interconnection point between @'s network and Carolina's. @ conceded that the Commission has ruled on the issue in a manner adverse to @'s position. Accordingly, @ requested the Commission to hold its Petition in abeyance while it initiates a proceeding with the Federal Communications Commission (FCC) seeking a declaratory ruling on the cost of transport issue. @ stated that, therefore, an oral argument before the Commission is unnecessary.

The Chair concludes that good cause exists to hold these dockets in abeyance pending further Order.

IT IS, THEREFORE, SO ORDERED.

ISSUED BY ORDER OF THE COMMISSION.

This the 19th day of July, 2001.

NORTH CAROLINA UTILITIES COMMISSION

Geneva S. Thigpen

Geneva S. Thigpen, Chief Clerk

pk071901.05

ATTACHMENT 3 TO

@ COMMUNICATIONS' REPLY COMMENTS

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Application by Verizon Pennsylvania Inc., Verizon Long Distance, Verizon Enterprise Solutions, Verizon Global Networks Inc., and Verizon Select Services Inc., for Authorization To Provide In-Region, InterLATA Services in Pennsylvania	)	CC Docket No. 01-138

APPLICATION BY VERIZON PENNSYLVANIA FOR AUTHORIZATION TO PROVIDE IN-REGION, INTERLATA SERVICES IN PENNSYLVANIA

REPLY APPENDIX A

Volume 1

Reply Declarations

Attachment 2

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Application by Verizon Pennsylvania	)	
Inc., Verizon Long Distance, Verizon	)	
Enterprise Solutions, Verizon Global	)	CC Docket No. 01-138
Networks Inc., and Verizon Select	)	
Services Inc., for Authorization To	)	
Provide In-Region, InterLATA Services	)	
in Pennsylvania	)	

REPLY DECLARATION OF PAUL A. LACOUTURE

AND

VIRGINIA P. RUESTERHOLZ

1. My name is Paul A. Lacouture. I submitted a Declaration with Virginia P. Ruesterholz in this proceeding on June 21, 2001. My qualifications are set forth in that declaration.

2. My name is Virginia P. Ruesterholz. I submitted a Declaration with Paul A. Lacouture in this proceeding on June 21, 2001. My qualifications are set forth in that declaration.

I. Purpose of Reply Declaration

3. The purpose of our reply declaration is to address the issues raised by commenters about whether Verizon's performance satisfies the checklist requirements in Section 271(c)(2)(B) of the Telecommunications Act of 1996. When these isolated challenges and unsupported assertions are placed in perspective and Verizon's performance data are presented fairly, it is evident that Verizon is meeting the checklist.

the issue in the Sprint arbitration is whether Sprint should bear the additional costs created by that decision.

109. The issue is best illustrated through an example. Suppose a Verizon customer located in Allentown, Pennsylvania, calls a next door neighbor whose local service provider is Sprint. If Sprint has only one Point of Interconnection in the Philadelphia LATA and that Point of Interconnection is located in downtown Philadelphia, Verizon would have to carry that local call approximately 50 miles just to hand it off to Sprint for completion. Because of Sprint's chosen method of interconnection, there would be an additional 50 miles of transport costs associated with this local call. These additional transport costs would not exist if Sprint chose a more efficient method of interconnection, such as by establishing a Point of Interconnection in each local calling area in the LATA.

110. Verizon should not be required to bear additional transport costs simply because a CLEC has chosen a more costly and less efficient method of interconnection. Since these additional transport costs would be associated with the completion of a local call from Verizon's customer, Verizon would not be able to recover them by imposing toll charges. In fact, Verizon would typically not even be able to charge its customer any incremental charge for a local call to Sprint's customer because the bulk of Verizon's residential customers have flat-rated calling plans.

111. To resolve this issue in the ongoing Sprint arbitration proceeding, Verizon has proposed an arrangement for Verizon and Sprint to share the additional transport costs created by Sprint's decision to establish only a single Point of Interconnection in a LATA. Under this approach, Verizon would bear the transport costs of carrying local

calls from Verizon's end offices to Verizon's tandem switches or other designated locations. Sprint would then bear the cost of transporting local calls from Verizon's tandem switches and the designated locations to Sprint's chosen Point of Interconnection. Verizon's proposal would allow Sprint to make a business decision to establish only one Point of Interconnection per LATA, so long as Sprint bears at least some of the additional costs created by choosing that method of interconnection.

b. Collocation

112. Verizon's collocation performance in Pennsylvania is strong. In our initial declaration, we indicated that Verizon completed 100 percent of the physical collocation (traditional caged arrangements), SCOPE and CCOE jobs from February through April 2001 on time. We also indicated that Verizon completed the single virtual collocation arrangement it provisioned during those months on time. Additionally, we stated that from February through April 2001, Verizon completed 97.93 percent of the collocation augments provisioned during those months on time.

113. Verizon's collocation performance continues to be excellent. In May and June 2001, Verizon did not complete any traditional physical, CCOE, or virtual collocation arrangements. Verizon did complete 4 SCOPE arrangements on time during those months. In May, Verizon also completed on time 92 percent of the 37 collocation augments it provisioned. In June, Verizon completed 100 percent of the 13 collocation augments it provisioned on time. *See* Attachment 37.

114. As we indicated in our initial declaration, on May 24, 2001, the Pennsylvania PUC set new collocation provisioning intervals. *See Pennsylvania Public Utility Commission v. Verizon Pennsylvania Inc: Rhythms Links, Inc. v. Verizon*

ATTACHMENT 4 TO

@ COMMUNICATIONS' REPLY COMMENTS

DOCKET FILE COPY ORIGINAL

BEFORE THE

Federal Communications Commission

WASHINGTON, D.C.

In the Matter of	)	
	)	
Application by Verizon Pennsylvania	)	
Inc., Verizon Long Distance, Verizon	)	CC Docket No. 01-138
Enterprise Solutions, Verizon Global	)	
Networks Inc., and Verizon Select	)	
Services Inc., for Authorization To	)	
Provide In-Region, InterLATA Services	)	
in Pennsylvania	)	

COMMENTS OF SPRINT COMMUNICATIONS COMPANY L.P. ON VERIZON PENNSYLVANIA'S SECTION 271 APPLICATION

WILLKIE FARR & GALLAGHER
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Attorneys for Sprint
Communications Company L.P.

Dated: July 11, 2001

Attachment 3

I. INTRODUCTION AND SUMMARY

Section 271 requires a BOC to provide interconnection on rates, terms, and conditions that are just, reasonable, and nondiscriminatory. As discussed below, Verizon fails the Section 271 checklist for several reasons. First, Verizon refuses to allow Sprint to interconnect at a single point of interconnection per LATA, as clearly required by the Commission's rules and precedent. Second, instead of allowing CLECs to order interoffice transport facilities at the same time they apply for collocation, Verizon will not accept such orders until two weeks before the collocation site is completed. Where facilities are not available, this practice can needlessly delay a CLEC's roll-out schedule by four or more months. Third, Verizon has refused to apply reciprocal compensation to local calls over existing access trunk facilities and has instead attempted to bill Sprint access charges for these calls. Fourth, Verizon continues to double charge CLECs for collocation power that they do not use. Fifth, Verizon insists that Sprint allow Verizon to collocate its equipment at Sprint's POPs, even though the Commission has expressly held that any attempt to impose ILEC obligations on non-incumbent LECs is inconsistent with the Act.

II. VERIZON FAILS TO COMPLY WITH SECTION 271's COMPETITIVE CHECKLIST.

A. Verizon's Refusal To Allow CLECs To Interconnect At A Single Point Per LATA Violates The Act And The Commission's Rules. (Checklist Item 1)

Section 271 requires a BOC to provide "[i]nterconnection in accordance with the requirements of sections 251(c)(2) and 252(d)(1)." 47 U.S.C. § 271(c)(2)(B)(i). Section 251(c)(2) requires the incumbent to provide interconnection "at any technically feasible point within the carrier's network . . . on rates, terms, and conditions that are just, reasonable, and nondiscriminatory." Id. § 251(c)(2)(B) and (D). The Commission has concluded that Section 251(c)(2) requires ILECs to allow CLECs to interconnect at a single point of interconnection per

LATA. As discussed below, Verizon refuses to allow CLECs to interconnect at a single point of interconnection per LATA, and therefore, cannot be in compliance with checklist item 1.

The Commission has repeatedly and unequivocally stated that CLECs are entitled to interconnect to an incumbent's network at all technically feasible points, including a single point of interconnection within a LATA.[2] The Commission has explained that this ILEC obligation is critical for achieving the goals of the Act because it "lowers barriers to competitive entry for carriers that have not deployed ubiquitous networks by permitting them to select the points in an incumbent LEC's network at which they wish to deliver traffic." Local Competition Order ¶ 209. Furthermore, "Section 251(c)(2) gives competing carriers the right to deliver traffic terminating on an incumbent LEC's network at any technically feasible point on that network, rather than obligating such carriers to transport traffic to less convenient or efficient interconnection points."[3] As a result, the Commission has consistently required Section 271

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2 See 47 C.F.R. § 51.321(a) (2000); Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, 11 FCC Rcd 15499, ¶ 209 (1996) ("Local Competition Order"); Application by SBC Communications, Inc. Pursuant to Section 271 to Provide In-Region, InterLATA Services in Texas, 15 FCC Rcd 18354, ¶ 78 (2000) ("Texas Order"); Joint Application by SBC Communications Inc. for Provision of In-Region, InterLATA Services in Kansas and Oklahoma, 16 FCC Rcd 6237, ¶¶ 232-35 (2001) ("Kansas/Oklahoma Order"); Application of Verizon New England Inc. For Authorization to Provide In-Region, InterLATA Services in Massachusetts, CC Dkt. No. 01-9, Memorandum Opinion and Order, ¶ 197 (rel. Apr. 16, 2001) (FCC 01-130) ("Massachusetts Order"); Developing a Unified Intercarrier Compensation Regime, CC Dkt. No. 01-92, Notice of Proposed Rulemaking, ¶ 112 (rel. Apr. 27, 2001) (FCC 01-132).

3 Massachusetts Order ¶ 197. While Verizon has attempted to define the term "point of interconnection" differently than the term "interconnection point," it is noteworthy that the Commission uses these terms interchangeably. See id. ¶¶ 197-199, 209-12; see also *En Banc* Hearing Tr. at 369-71 (Apr. 26, 2001) (App. B, Tab C, Sub-tab 27) ("4/26/01 Tr."). As Sprint has explained in the proceeding below, Verizon has attempted to distinguish the term "Interconnection Point" from the term "Point of Interconnection" by severing -- via GRIP -- the billing associated with interconnection arrangements from the physical interconnection itself. However, historically the Point of Interconnection has

applicants to prove that they allow CLECs to interconnect at a single point of interconnection per LATA in order to demonstrate compliance with the checklist.[4]

In spite of the clear mandate from the Commission, Verizon continues to stonewall competition in Pennsylvania by insisting on including its Geographically Relevant Interconnection Point ("GRIP") scheme in new interconnection agreements with competitors. GRIP is an interconnection artifice, invented by Verizon, that imposes costs on Verizon's competitors by requiring an interconnecting CLEC to spend additional money to build multiple interconnection points within a LATA or to pay for Verizon's costs of transporting its originating traffic to the CLEC's point of interconnection.[5] For traffic originating on Verizon's network, in the case of a single tandem LATA, Verizon accomplishes this either by requiring the CLEC to (1) collocate at the originating end office; or (2) credit Verizon its charges for transport, tandem switching (if required), and any other charges incurred for transporting the traffic from Verizon's end office to the CLEC. As a result, Verizon is required only to deliver its originating traffic to the end office serving that customer, and not to the CLEC's point of interconnection.[6] In

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been used for both billing and as the physical location for hand-off of traffic. This billing fiction has been created by Verizon to increase CLEC's interconnection costs, while at the same time decreasing Verizon's costs. See Sprint Response to E-mail Request (May 23, 2001) (attached at Appendix A).

4 See Texas Order ¶ 78 ("[A] competitive LEC has the option to interconnect at only one technically feasible point in each LATA."); see also Massachusetts Order ¶ 197; Kansas/Oklahoma Order ¶¶ 232-35.

5 See Sprint Communications Company L.P. and The United Telephone Company of Pennsylvania, Initial Comments at 13-14 (Feb. 12, 2001) ("Sprint Initial Comments") (attached at Appendix B).

6 Verizon has proposed various versions of GRIP throughout its region. The version offered to Sprint, as described above, is called VGRIP -- Virtual Geographically Relevant Interconnection Points -- by Verizon. Other versions do not allow the CLEC the option of crediting Verizon's charges for transport and instead require the CLEC to collocate.

contrast, for traffic originating on the CLEC's network, again in the case of a single tandem LATA, the CLEC must deliver the traffic to either (1) the Verizon end office serving the Verizon terminating customer, or (2) a collocation site at Verizon's end office. This scheme essentially shifts the cost of transport for Verizon's originating traffic to the CLEC, thus requiring the CLEC to bear the costs of transport for both its own and Verizon's originating traffic.[7] Such a requirement impermissibly requires the CLEC to shoulder Verizon's costs of serving its end-user customers, in violation of the Commission's rules.[8]

Moreover, Verizon's actions are inconsistent with the decision of the U.S. District Court of the Middle District of Pennsylvania. In the MCI-Bell Atlantic arbitration proceeding, the PUC reached a more reasonable, but similarly unlawful, resolution to the dispute between the parties regarding points of interconnection. The PUC ordered MCI and Verizon to incorporate terms into their interconnection agreement requiring a single point of interconnection per access

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Still other versions allow Verizon to request that the CLEC collocate, but give the CLEC the right to seek arbitration instead of complying. Verizon has characterized this proposal as a financial choice for the CLEC. Regardless of that characterization, the economics are the same for the CLEC with the end result that Verizon's interconnection scheme impermissibly shifts Verizon's transport costs to the CLEC and in effect precludes the CLEC from interconnecting at a single point per LATA as required by the Commission.

7 See Sprint Initial Comments at 13; see also id., Declaration of Gerald Flurer ¶¶ 8, 9 (Feb. 12, 2001) ("Flurer Decl.") (attached at Appendix B) (explaining that GRIP would force Sprint to be "financially responsible for delivering traffic originated on its network to Interconnection Points at Verizon's end office switches, located deep within Verizon's network, while Verizon would have no reciprocal obligations for the traffic it delivers to Sprint."). The Massachusetts DTE found a similar scheme to be unlawful. See Massachusetts D.T.E. 98-57, Investigation by the Department on its own motion as to the propriety of the rates and charges set forth in the following tariffs: M.D.T.E. Nos. 14 and 17, Mar. 24, 2000 at 78-79 <http://www.state.ma.us/dpu/telecom/98-57/FinalOrder.htm>.

8 Cf. Local Competition Order ¶ 1062 (recognizing that, for trunking, each carrier should only pay for transport of traffic it originates).

tandem, resulting in more than one point of interconnection in any LATA served by two or more access tandems.[9] On review, the District Court remanded to the PUC with instructions to reform the agreement in accordance with Commission rulings to permit MCI to interconnect with Verizon's network at one point in each LATA.[10] Although an appeal is pending, no stay of the District Court's decision has been granted and it is thus binding law. See 4/26/01 Tr. at 357. Despite this fact, Verizon continues to insist that CLECs acquiesce to its demands for multiple points of interconnection per LATA.[11] Although GRIP requires multiple points of interconnection per tandem, and is thus distinct from the single point of interconnection per tandem requirement that was at issue in the District Court decision, for single tandem LATAs, GRIP in fact imposes *even more onerous* interconnection terms on CLECs than those found

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9 See Joint Application of Bell Atlantic-Pennsylvania, Inc. and Petition of MCIMetro Access Transmission Services for Approval of an Interconnection Agreement Under Section 252(e), A-310236, Folder 00002, Opinion and Order (Sep. 3, 1997) (App. B, Tab O, Sub-tab 11); see also 4/26/01 Tr. at 357.

10 See MCI Telecommunications Corp. v. Bell Atl.-Pa., Inc., Civil No. 1:CV-97-1857 (M.D. Pa. June 30, 2000), at 14-15 (App. B, Tab O, Sub-tab 17). A number of other courts have similarly upheld a CLEC's right to interconnect at a single point of interconnection per LATA. See, e.g., US West Communications v. AT&T Communications of the Pac. Northwest, Inc., No. C97-1320R, 1998 U.S. Dist. LEXIS 22361 at *26 (W.D. Wa. July 21, 1998) (contention that the "Act requires a CLEC to have a POI in each local calling area in which that CLEC offers local service" is "wrong"); US W. Communications, Inc., v. Minnesota Pub. Utils. Comm'n, No. Civ. 97-913 ADM/AJB, slip op. at 33-34 (D. Minn. 1999) (same); US W. Communications, Inc., v. Arizona Corp. Comm'n, 46 F. Supp. 2d 1004, 1021 (D. Ariz. 1999) (requiring CLECs to establish a point of interconnection in each local exchange "could impose a substantial burden upon CLECs, particularly if they employ a different network architecture than [the incumbent]"); US W. Communications, Inc. v. AT&T Communications of the Pac. Northwest, Inc., 31 F. Supp. 2d 839, 852 (D. Or. 1998) (same); US W. Communications, Inc. v. MFS Intelenet, Inc., No. C97-222WD, 1998 WL 350588, *4 (W.D. Wa. 1998), aff'd, 193 F.3d 1112, 1124 (9th Cir. 1999) (same).

11 See 4/26/01 Tr. at 363-64 (explaining Verizon's position that it is willing to force a CLEC into arbitration to obtain multiple points of interconnection per LATA in some cases).

unlawful by the court. GRIP plainly runs afoul of the court's mandate that Verizon allow CLECs to interconnect at a single point of interconnection per LATA.[12]

Nor can Verizon finesse its failure by relying on Section 252(i) to meet this checklist item. In prior Section 271 orders, the Commission has held that an applicant has complied with its statutory obligations to interconnect at a single point in a LATA if it has executed at least one interconnection agreement that allows a single point of interconnection per LATA. See Massachusetts Order ¶ 197; Kansas/Oklahoma Order ¶ 232; Texas Order ¶ 78. The Commission reasoned that any requesting carrier would then be able to opt into that provision pursuant to Section 252(i). See Massachusetts Order ¶ 197; Texas Order ¶ 78. In Pennsylvania, not only has the PUC denied carriers their right to interconnect at a single point of interconnection per LATA, but by Verizon's own admission, ***there are no interconnection agreements subject to Section 252(i) that are available for carriers to choose that include this provision***. Specifically, in response to a data request by the PUC in the proceeding below, Verizon stated:

> Request: Is there an interconnection agreement that a CLEC can opt into in [Pennsylvania] today that has the one point of interconnection per LATA, the CLEC gets to choose, opt into it?
>
> * * *
>
> Verizon response: There are no interconnection agreements in Verizon-PA that a CLEC can opt into that contain a provision which allows the CLEC to designate a single interconnection point per LATA. Furthermore, the expired MCI agreement contains no such provision either. Rather, the expired Verizon-PA/MCI agreement stipulates that MCI establish at least one interconnection point in each Verizon-PA tandem serving area, as the Commission ordered in the

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12 See id. at 358 ("Verizon has a proposal referred to as GRIPS, geographically relevant interconnection points, which require[s] even more interconnection points than has been required in the MCI case."); Technical Conference Tr. at 102-103 (Mar. 2, 2001) (App. B, Tab C, Sub-tab 12) ("3/2/01 Tr.").

> MCI arbitration. In addition, all Verizon PA interconnection agreements designate multiple Verizon IPs for use by the CLEC.[13]

Although Verizon has assured the PUC that there are agreements available for opt-in that do not contain GRIP, it appears that these agreements require CLECs to interconnect at a single point of interconnection *per tandem* -- not at a single point of interconnection *per LATA* -- as required by the Commission's rules. See Verizon Response to In-Hearing Data Request No. 66 (Mar. 5, 2001) (App. B, Tab D, Sub-tab 10).

As a result of its continued obfuscation of the issue, Verizon has been thus far able to ignore its interconnection obligations without consequence. Verizon has denied CLECs their legal rights to a single point of interconnection per LATA. The local exchange market in Pennsylvania cannot be irreversibly open to competition so long as Verizon is allowed to raise its rivals' costs contrary to federal law. The Commission cannot find that Verizon is in compliance with this item of the competitive checklist.

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[13] See Verizon Response to In-Hearing Data Request No. 64 (Mar. 5, 2001) (App. B, Tab D, Sub-tab 10). Despite this response, the PUC concluded in its Consultative Report that Verizon "has existing interconnection agreements that permit competing carriers to interconnect at a single point on Verizon PA's network." Application by Verizon Pennsylvania for Authorization to Provide In-Region, InterLATA Services in Pennsylvania, CC Dkt. No. 01-138, Consultative Report, PUC at 47 (FCC June 25, 2001) ("PUC Report"). This conclusion likely stems from other contradictory statements made by Verizon that such agreements are available in Pennsylvania. See 4/26/01 Tr. at 360, 364. For example, Verizon has identified the Network Access Solutions and Mpower interconnection agreements as examples of agreements that allow a single point of interconnection per LATA; however, these agreements similarly require the CLEC to either collocate at multiple points in a LATA or to pay for Verizon's costs of transport. See Lacouture-Ruesterholz Decl. ¶ 9 (App. A, Tab A); Network Access Solutions, Inc. Interconnection Agreement, § 4 (June 20, 2000) (App. C, Tab H); MGC Communications, Inc. Interconnection Agreement, § 4 (May 12, 2000) (App. C, Tab G). They do not allow a CLEC to designate a single point of interconnection per LATA. Sprint has been unable to identify any interconnection agreement available for opt-in pursuant to Section 252(i) that does.

ATTACHMENT 5 TO

@ COMMUNICATIONS' REPLY COMMENTS

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

November 7, 2001

Via Facsimile and U.S. Mail

W. Scott McCollough
Stumpf Craddock Massey & Pulman
1801 N. Lamar Blvd, Suite 104
Austin, TX 78701

Pete Sywenki
Sprint Corporation
401 9th St. NW
Washington, DC 20004

Re: @ Communications, Inc. v. Carolina Telephone & Telegraph and Central Telephone Company – Potential Accelerated Docket Matter

Dear Counsel:

On August 16, 2001, @ Communications, Inc. ("@ Comm") requested that the Commission initiate its Accelerated Docket process to resolve a dispute between @ Comm and Carolina Telephone & Telegraph and Central Telephone Company ("Sprint") concerning the cost of transport from points of interconnection between the parties and local calling areas. Sprint provided a written response to @ Comm and the Commission on September 4, 2001. On September 25, 2001, Commission staff conducted a conference with the parties in an effort to mediate the dispute. At the conference, the parties agreed to provide supplemental information to facilitate the staff's analysis of the dispute and attempted mediation.

After reviewing the case pursuant to 47 C.F.R. § 1.730(e), including supplemental information provided by @ Comm on October 8, 2001, and Sprint's response filed on October 16, 2001, Commission staff have determined that @ Comm's claims, as currently framed, are not appropriate for inclusion on the Accelerated Docket.

As discussed with the parties previously, this determination has no bearing on the merits of @ Comm's dispute with Sprint, and @ Comm retains the ability to file a formal complaint under section 208 of the Communications Act utilizing the traditional formal complaint procedures set forth in 47 C.F.R. §§1.720-1.736. If you have further questions, please contact me at (202) 418-7273.

Sincerely,

Lisa B. Griffin

Lisa B. Griffin
Market Disputes Resolution Division
Enforcement Bureau

ATTACHMENT 6 TO

@ COMMUNICATIONS REPLY COMMENTS

Sprint

September 4, 2001

Mr. Alex Starr, Esq.
Chief, Market Disputes Resolution Division
Enforcement Bureau
Federal Communications Commission
445 Twelfth Street SW
Washington D.C. 20554

VIA FAX: (202) 418-7223

Re: @Communications, Inc. Request For Inclusion of Complaint, Once Filed, on Accelerated Docket ("the Request")

Dear Mr. Starr,

In accordance with the letter dated August 20, 2001 from Lisa Griffin, Assistant Chief of the Market Disputes Resolution Division, this letter provides a written response on behalf of Carolina Telephone & Telegraph and Central Telephone Company (collectively, "Sprint") to the Request submitted by @Communications, Inc. ("@Comm"). For the reasons set forth below, @Comm's Request should be denied.[1]

I. @Comm's Request Does Not Meet the Commission's Requirements for Inclusion in the Accelerated Docket.

As the Enforcement Bureau clearly understands,[2] @Comm's complaint raises one issue: Who should pay for transport to a point of interconnection ("POI") that is outside the ILEC's local exchange boundary? @Comm's complaint should not be included in the Accelerated Docket, because the complaint does not satisfy the factors for admission set forth in Rule 1.730(e). Specifically, @Comm's Request fails to comply with 1.730(e)(3), because the issue in the Request is not suited for decision under the constraints of the Accelerated Docket, and fails to comply with 1.730(e)(2), because it cannot be determined that expedited resolution is likely to advance telecommunications competition. Further, the Request fails to comply with 1.730(e)(4) to the extent that @Comm's contract claim does not state a claim for violation of the Act,[3] Commission rule or order falling within the Commission's jurisdiction.

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[1] Factors to be considered in deciding whether to admit a proceeding onto the Accelerated Docket are set forth in 47 CFR §1.730(e).

[2] See August 20, 2001 letter from Lisa Griffin, Assistant Chief of the Market Disputes Resolution Division, to Leon Kestenbaum, Sprint Vice President, Federal Regulatory Affairs (Ret.).

[3] "Act" refers to the Communications Act of 1934, as amended.

A. The Issue in the Request is Not Suited For Decision Under the Constraints of the Accelerated Docket.

Because the issue raised in the Request is the subject of an ongoing Commission rulemaking, it is inappropriate to determine this issue in a complaint proceeding, much less in the Accelerated Docket. This issue has been hotly debated in numerous states. ILECs have argued that their obligation to transport a local call originating on their network without compensation ends at the local exchange boundary. CLECs maintain that ILECs may not assess any charges for delivering ILEC-originated traffic to a POI established anywhere in the LATA. State commissions have arrived at differing decisions on this issue. For example, commissions in New York and Wisconsin have generally agreed with the CLECs' position.[4] Florida and Georgia deferred decisions in two-party dockets and referred the issue to a generic proceeding in order to receive broader input. South Carolina has sided with the ILECs on this issue,[5] and as @Comm has acknowledged, the North Carolina Utilities Commission ("NCUC") has twice issued rulings in favor of the ILEC position.[6]

There have been clear indications that the Commission should end this debate by issuing a ruling that applies across the nation.[7] On April 27, 2001, the Commission

[4] Joint Petition of AT&T Communications of New York, Inc., TCG New York Inc. and ACC Telecom Corp. Pursuant to Section 252(b) of the Telecommunications Act of 1996 for Arbitration to Establish an Interconnection Agreement with Verizon New York Inc., New York Public Service Comm'n Case 01-C-0095, *Order Resolving Arbitration Issues*, (issued July 30, 2001) at 28; Petition for Arbitration to Establish an Interconnection Agreement Between Two AT&T Subsidiaries, AT&T Communications of Wisconsin, Inc. and TCG Milwaukee, and Wisconsin Bell, Inc. (d/b/a Ameritech Wisconsin), Public Service Comm'n of Wisconsin No. 05-MA-120, (issued October 12, 2000) at 37-38.

[5] Petition of AT&T Communications of the Southern States, Inc., for Arbitration of Certain Terms and Conditions of a Proposed Interconnection Agreement with BellSouth Telecommunications, Inc., Pursuant to 47 USC Section 252, South Carolina PSC Docket No. 2000-527C, Order No. 2001-079 (issued January 30, 2001).

[6] Arbitration of Interconnection Agreement Between AT&T Communications of the Southern States, Inc., and TCG of the Carolinas, Inc., and BellSouth Telecommunications, Inc., Pursuant to the Telecommunications Act of 1996, NCUC Docket No. P-140, Sub 73, P-646, Sub 7, *Recommended Arbitration Order*, (issued March 9, 2001) ("AT&T NC Arbitration Order") at 5-11; Petition of Sprint Communications Company L.P. for Arbitration with BellSouth Telecommunications, Inc. Pursuant to Section 252(b) of the Telecommunications Act of 1996, Docket No. P-294, Sub 23, *Recommended Arbitration Order* (Issued July 5, 2001) ("Sprint NC Arbitration Order") at 19-23

[7] The NCUC suggested both to AT&T and Sprint Communications Co. L.P. that they may wish to seek a declaratory ruling from the Commission. AT&T NC Arbitration Order at 11; Sprint NC Arbitration at 23. The NCUC ordered @Comm's complaint against Sprint held in abeyance pursuant to @Comm's request "while it (@Comm) initiates a proceeding with the...FCC...seeking a declaratory ruling on the cost of transport issue." @Communications, Inc. v. Carolina Telephone and Telegraph Co. and

released a Notice of Proposed Rulemaking (the "*NPRM*") which, *inter alia*, squarely addressed this issue.[8] In paragraph 112 of the *NPRM*, the Commission had a clear opportunity to clarify the current state of the law regarding who bears the cost of transporting a local call to a POI outside the local calling area. Instead of resolving the controversy, the Commission chose to simply acknowledge the debate and frame the issue, effectively deferring a final decision until after comments are received.[9] Specifically, in paragraph 112, the Commission cited current reciprocal compensation rules, including 51.701(c)-(e) and 51.703(b). The Commission then stated:

> "Application of these rules has led to questions concerning which carrier should bear the cost of transport to the POI, and under what circumstances an interconnecting carrier should be able to recover from the other carrier the costs of transport from the POI to the switch serving its end user. In particular, carriers have raised the question whether a CLEC, establishing a single POI within a LATA, should pay the ILEC transport costs to compensate the ILEC for the greater transport burden it bears in carrying the traffic outside a particular local calling area to the distant single POI. Some ILECs will interconnect at any POI within a local calling area; however, if a CLEC wishes to interconnect outside the local calling area, some LECs take the position that the CLEC must bear all costs for transport outside the local calling area. CLECs hold the contrary view, that our rules simply require LECs to interconnect at any technically feasible point within a LATA, and that each carrier must bear its own transport costs on its side of the POI."

The Commission then requested comments regarding how to resolve the issue, asking:

> "If a carrier establishes a single POI in a LATA, should the ILEC be obligated to interconnect there and thus bear its own transport costs up to the single POI when the single POI is located outside the local calling area? Alternatively, should a carrier be required either to interconnect in every local calling area, or to pay the ILEC transport and/or access charges if the location of the single POI requires the ILEC to transport a call outside the local calling area?..."[10]

Central Telephone Co., Docket Nos. P-7, Sub 969 and P-10, Sub 611, *Order Holding Dockets in Abeyance*, (issued July 19, 2001) (the "Abeyance Order"). Finally, the Commission itself invited parties to file a petition for declaratory ruling or petition for rulemaking with the Commission. In the Matter of Joint Application by SBC Communications, Inc. *et al.* for Provision of In-Region, InterLATA Services in Kansas and Oklahoma, CC Docket No. 00-217, *Memorandum Opinion and Order*, FCC 01-29 (rel. January 22, 2001) at ¶234.

[8] In the Matter of Developing a Unified Intercarrier Compensation Regime, CC Docket No. 01-92, *Notice of Proposed Rulemaking* (rel. April 27, 2001) at ¶¶112-114.

[9] In addition, the Commission could have, on its own motion, issued a declaratory ruling to resolve the controversy, as provided in 47 CFR §1.2.

[10] *NPRM* at ¶113.

Based on the foregoing, it is clear that the issue raised by @Comm in its proposed complaint is the exact issue under consideration by the Commission in the *NPRM*. As a result, this matter is not suited for decision under the constraints of the Accelerated Docket, as provided in Commission Rule 1.730(e)(3). This is not a matter for enforcement of the rules between two parties, but is instead an issue requiring industry-wide debate and a policy decision by the Commission.

Because the Commission has yet to clarify the current state of the law on the cost of transport issue, the Enforcement Bureau has nothing to enforce. The full Commission should make the decision on this issue, which should apply to all LECs. Therefore, all LECs should have access to the debate. The *NPRM* provides the precise vehicle to accomplish this task. It would be a waste of time and resources for the Enforcement Bureau to duplicate the efforts commenced in the *NPRM*.[11]

A petition for declaratory ruling would be a valid alternative to the *NPRM*, as suggested by both the NCUC and the Commission. Commission Rule 1.2 provides that the Commission may issue a declaratory ruling to terminate a controversy or remove uncertainty.[12] Both vehicles would provide an opportunity for broad participation in resolving an issue of national scope. In fact, in obtaining the Abeyance Order from the NCUC on the cost of transport issue, @Comm represented to the NCUC that it would be initiating a proceeding with the Commission to seek a declaratory ruling.[13] Rather than honor the Abeyance Order by seeking a declaratory ruling, @Comm has instead not only pursued a complaint, but also seeks inclusion on the Accelerated Docket. Perhaps @Comm realizes that the Commission would not likely entertain a request for declaratory ruling while it is considering the same issue in a rulemaking proceeding. Nevertheless, @Comm is in violation of the spirit, if not the letter, of Abeyance Order, inappropriately attempting to short-circuit a process requiring broad participation by seeking accelerated treatment of a two-party complaint.[14]

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[11] Comments in the *NPRM* were filed on August 21, 2000. Reply Comments are due on October 5.

[12] 47 CFR §1.2

[13] @Communications, Inc. v. Carolina Telephone and Telegraph Co. and Central Telephone Co., Docket Nos. P-7, Sub 969 and P-10, Sub 611, *@Comm's Reply to Answer* (filed July 16, 2001) at 3. @Comm stated "@Communications will request the [NCUC] to hold its Petition in this docket in abeyance and will initiate a proceeding at the FCC seeking a declaratory ruling on the cost of transport issue and the effect of 47 CFR §51.709(b)." See also Footnote 5, *supra*.

[14] The abeyance order entered by NCUC is supported by the need for Commission resolution of this *industry-wide* issue. Allowing @Comm to pursue the issue in a two-party complaint proceeding, rather than through a declaratory ruling or NPRM proceeding, would undermine the rationale for the abeyance order and establish a troubling precedent. The state commission arbitration and federal review scheme established by Congress in Sections 251 and 252 could be easily evaded if parties were indiscriminately permitted to "stay" interconnection agreement disputes at the state commissions and seek resolution of them by the Commission through the two-party complaint process.

B. It Cannot be Demonstrated that Expedited Resolution of the Cost of Transport Issue is Likely to Advance Telecommunications Competition.

@Comm's Request fails to satisfy 1.730(e)(2) because *@Comm* cannot demonstrate that resolution of the dispute is likely to advance competition in the telecommunications market. The very existence of the *NPRM*, as cited above, is evidence that the Commission is wrestling with the issue of who should pay for out-of-area transport in order to determine the policy that is most likely to advance competition.

This determination should be left to the Commission based on the fully developed record being created in the *NPRM*. Until the Commission makes its determination, the Enforcement Bureau cannot, and should not be expected to, determine the effect of this issue on competition. *@Comm*, therefore, cannot make the requisite showing that accelerated consideration of this issue by the Enforcement Bureau would be likely to advance competition in the telecommunications market.

C. @Comm's contract claim does not state a claim for violation of the Act, Commission rule or order falling within the Commission's jurisdiction.

A breach of contract claim, by itself, does not constitute a violation of the Act, Commission rule or order, as provided in Rule 1.730(e)(4). As stated in pages 2-4 above, until the Commission makes a determination that resolves the cost of transport issue, Sprint cannot be in violation of the Act, Commission rule or order. In fact, Sprint's position, requiring @Comm to assume the cost of transport to a POI outside the local calling area, precisely adheres to the NCUC's rulings in the AT&T NC Arbitration and the Sprint NC Arbitration. Because Sprint is not in violation of the Act or any Commission rule or order, @Comm is left only with a basic breach of contract claim. @Comm's contract claim is that Sprint's position conflicts with an alleged interconnection agreement provision.[15] Sprint denies that its position conflicts with any applicable interconnection agreement provision. Even if true, the change in law clause would require that the agreement be amended to reflect the law in North Carolina. Regardless, a contract claim, by itself, does not constitute a violation of the Act, Commission rule or order that would justify inclusion of the complaint on the Accelerated Docket.

II. Conclusion.

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[15] @Comm has conceded that its interconnection agreement with Sprint expired on August 16, 2000. The agreement has not been renewed or continued. There is no provision in the agreement for continuation of the agreement post-expiration.

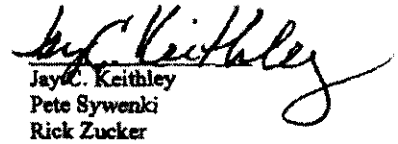
@Comm's complaint should not be included in the Accelerated Docket, because the complaint does not satisfy the factors for admission set forth in Rule 1.730(e). Specifically, @Comm's complaint fails to comply with 1.730(e)(2), (3) and (4).

@Comm's complaint fails to satisfy 1.730(e)(2) because @Comm cannot demonstrate that resolution of the dispute at issue is likely to advance competition in the telecommunications market. The language contained in the *NPRM* serves as proof that the Commission itself is wrestling with the issue of who pays for out-of-area transport in order to determine the policy that is most likely to advance competition.

@Comm's complaint fails to satisfy 1.730(e)(3) because the issue in the complaint is ill suited for decision under the constraints of the Accelerated Docket. The Accelerated Docket involves an expedited decision in a matter generally involving two parties, in this case @Comm and Sprint. However, the cost of transport issue is a national issue, the resolution of which may materially affect numerous CLECs and ILECs. Thus, a decision on this issue requires participation by numerous parties in an expansive forum, such as a rulemaking or a declaratory ruling. The Accelerated Docket is simply not suitable to make such a decision. Finally, @Comm's complaint fails to satisfy 1.730(e)(4), because a contract claim, by itself, does not constitute a violation of the Act, or a Commission rule or order.

In conclusion, deciding who pays for transport to a POI located outside the local calling area is a national issue that requires broad input and a definitive policy decision. The Commission has established an *NPRM* that directly addresses this issue. The decision should be made by the Commission in the *NPRM*, and not by the Enforcement Bureau in a complaint on the Accelerated Docket. @Comm's request for inclusion in the Accelerated Docket should be denied.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing response to the August 16, 2001 @Communications, Inc. request for Complaint on the FCC's Accelerated Docket against Carolina Telephone and Telegraph Company and Central Telephone Company has been served on the following by facsimile and/or by first class U.S. Mail, on this 4th day of September, 2001.

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